

REPORT

On the North-West Territories of Canada, the Hudson's Bay and the Indian Territories; with the Questions of Boundary and Jurisdiction connected therewith.

Parliamentary Paper
No. 54 of 1842.

The Despatch from the Right Honorable the Secretary of State for the Colonies to His Excellency the Governor General, which has been referred to the Executive Council, has more particular reference to the subject of the renewal of a Lease held by the Hudson's Bay Company for the "*Indian Territories*," which are not considered to be within the boundaries of Canada, though subject to Canadian jurisdiction.

Parliamentary Paper
No. 542 of 1850.

But the Despatch also makes official communication to the Government of this Province of the Hudson's Bay Company's "Statement of Rights," under their original Charter, as submitted to the Imperial Government in 1850 by Sir J. H. Pelly, the Chairman of the Company.

It becomes necessary therefore that the Provincial Government should not only afford the information requisite to the Committee of the House of Commons as requested by the Despatch from the Colonial Secretary, by means of witnesses or otherwise, but should also express strongly its views upon the "Statement of Rights" referred to, lest, when thus Officially submitted, silence might be misconstrued into an assent to the claims which the Company have therein asserted.

The rights of the Hudson's Bay Company and the effect of their operations upon the interests of Canada, will best be considered under the following separate heads, viz :

First.—With respect to their operations under the Original Charter on the territories affected thereby.

Second.—With respect to their operations within the boundaries of this Province.

Third.—With respect to their operations on what has been termed the Indian Territories, now under Lease to them.

Fourth.—Arising out of the foregoing, the more important question of the Boundaries of the above Territorial Divisions; and

Fifth.—With respect to jurisdiction as exercised and as sanctioned by law.

OPERATIONS OF THE COMPANY ON THEIR OWN TERRITORIES.

On the first head, as regards their operations under their Charter on the territories which, if valid, it would cover, it is a matter of very secondary importance to Canada. The territories of the Hudson's Bay Company, taken at the largest extent which any sound construction of their Charter in connection with international rights would warrant, if not in point of distance so very remote, are nevertheless so situated, that it can only be when all the localities to the south and west, more available for purposes of agriculture and settlement, have been filled to overflowing, that settlers may be gradually forced into that vicinity from the superabundant population of more favored countries.

43 Geo. 3rd Cap. 138.

1 & 2 Geo. 4, Cap. 66.

The most direct interest that Canada could have in the matter at the present moment, being responsible for the administration of justice there, would be rather of a moral and political than of an interested or commercial character. But as the necessities of the Company, in whose hands a monopoly of the trade has practically existed since the treaty of Utrecht, together with the powers which they profess to derive from their Charter, has induced them to establish a jurisdiction which for the moment seems to have been successful in maintaining tranquility and order, Canada has had no special reason to intervene, though if any complaints had been made on this score she would of course have felt called upon to exercise the powers vested in her by Imperial Statutes.

It is not indeed to be denied that the freedom of the trade, consisting of furs and fisheries, would be of advantage to this country, but as this involves a question of the validity of the Charter, and whether or not, if valid in respect of the territory really affected by it, it would also affect the open sea of the Bay; and seeing that the question is not now raised of any further legislation to give effect to the powers it professes to confer, the consideration of this point is immaterial at the present moment as compared with the more important subjects that have to be treated of.

OPERATIONS OF THE COMPANY ON CANADIAN TERRITORIES.

The second point to be taken into consideration and which is of a more important nature, is that which affects the operations of the Company within the boundaries of Canada; and on this head it must be admitted that they have had every facility they could possibly enjoy in their own territories, if such exist: whether on the coasts of Labrador, Lakes Huron, Superior or Winnipeg; whether on the Saguenay, the St. Maurice, the Ottawa, the Red River, the Assiniboine or the Saskatchewan, wherever they have operated within the boundaries of Canada, they have had precisely the same scope as within their own territories on the shores of Hudson's Bay; not indeed but what if opposition had sprung up, the same facilities must necessarily have been afforded to any rival traders, had they not been effectually protected from such rivalry by their unlimited means, their extensive ramifications and complete organization, with which no rival traders were able to compete, unless indeed to a very limited extent in the immediate vicinity of the settlements.

There are indeed parts of the Province so remote from established settlements and having so little direct intercourse with them, that in former years it might have been to some extent a tax upon the country to have established tribunals sufficient to enforce the laws over regions inhabited only, with one exception, by the servants of the Company and the Indians, though it may now be reasonably questioned whether corresponding benefits would not have accrued from such a course, while it must be admitted that the Company have at all events reaped a profit, taking together the costs they have been put to from the want of legal tribunals and the monopoly of the trade which the non-organization of such tribunals has practically been the means of enabling them to enjoy.

The exception referred to, where a considerable settlement exists, besides the employees of the Company and the Indians, is the Red River Country.

But the time has passed when any considerations of expense or temporary inconvenience, even if proved to exist, can be allowed to stand in the way, when indeed the necessity for expansion compels the Provincial Government to create further facilities for it; and as an additional reason why the Government should no longer permit the present state of things to continue, it must be added that rumours have been gaining ground of late years, with a force and clearness which almost compel conviction, that the jurisdiction actually exercised in those remote localities has been as contrary to the wishes of the people as it has been manifestly without the sanction of law, all which has created a necessity for early investigation and action on the part of the Canadian Government.

With this view preparations were made in the Crown Lands Department last summer for a preliminary survey from the head of Lake Superior westward, preparatory to the opening of free grant roads, which have been so successful in other parts of the country, for the purpose of forming the nucleus of a settlement which would gradually penetrate to the valley of the Red River and the prairies beyond: besides which a first class thoroughfare would be necessary to afford easier means of communication with the navigable waters flowing to the west, &c., to facilitate the administration of justice in the distant settlements and the necessary intercourse generally between those parts and the more populous districts of the country, and which would at the same time throw open to emigration, agriculture and commerce a far larger area, with at least an equal average mildness of climate, and susceptible of more rapid development (a known characteristic of prairie countries), than all other parts of the Province heretofore rendered available for settlement.

The question of the renewal of the license of exclusive trade on the Indian Territories does not, of course, affect the country above referred to, any more than it does the lands, whatever they be, for they have never been defined upon authority, which the original Charter of the Hudson's Bay Company may, upon investigation, be construed to cover.

OPERATIONS OF THE COMPANY ON THE INDIAN TERRITORIES.

The third point is, for the moment, of less importance than the last, though within the period of another such lease as the Act 1 & 2 Geo. 4, cap. 66, authorises, it would be impossible to calculate the immense influence it must have upon the future of this country, and the British institutions which have taken root so deeply and thrive so nobly on its soil. The present operations of the Hudson's Bay Company on these "Indian Territories" are conducted on the same principle precisely as within the boundaries of Canada, the jurisdiction they exercise having heretofore had the excuse of necessity if not the sanction of law, and so far as it can be shewn to have been exercised to the benefit of those countries, the Company might fairly claim indemnity for the consequences, should that become necessary, and there is no reason to doubt either the generosity or the justice of the Legislature if called upon to ratify such a measure.

It now becomes necessary, under the fourth head, to treat the questions of boundary arising out of the three foregoing; and these questions have heretofore, been so little understood, that it will be necessary to enter into the subject at some length.

The difficulty of describing definite boundaries in countries, which at the time were but very imperfectly or partially known, has always been a matter of serious embarrassment. In the present instance, however, the difficulties can only be in matters of detail, and it may be safely assumed that they will be still further lessened by the fact, that wherever uncertainty can be supposed to prevail in any point of real importance, it can only be between the Province of Canada, on the one hand, and the "Indian Territories," on the other, (not between Canada and the Territories of the Hudson's Bay Company, unless at a point of comparatively little consequence); and it would be difficult to conceive that it could be adverse to the interests of the Crown or the community, if the principal question of boundary were sunk altogether, and the whole of the "Indian Territories" incorporated with this Province.

BOUNDARY OF THE COMPANY'S TERRITORIES UNDER CHARTER OF 1670.

In the first place then, with respect to the Territory affected by the Charter of the Hudson's Bay Company, it may be admitted that it would not only be difficult but absolutely impossible to define it; it is therefore fortunate that its limited extent renders the question of little importance further than that it becomes necessary to consider and rebut the very large pretensions of the Company.

The extent of the territory affected by the Charter is subject to two distinct conditions:

First—It is confined to all such territory as was then the property of the donor.

Second—It is confined to all such unknown territories as by the discoveries of the Company, his subjects, might become his property.

These distinctions, though not directly expressed, are nevertheless conditions resulting from the circumstances and necessary to a proper understanding of the case.

With respect to the first, viz: the territory which was the property of the donor, it is necessarily limited by usage and by common sense to what was known or discovered, for the unknown and undiscovered could not be his property and might never become his property, that being dependant upon circumstances then in the future; it is further limited by specific condition, expressed in the Charter itself, to such portions of what was then known as did not belong to any other christian Prince, which condition it must be admitted, was an acknowledgment on the part of the donor, that some part of the territory he was describing was not his, and of doubt as to what did or did not belong to him.

With respect to the extent of territory that *might have been* affected by the second condition above stated (that is as regards exclusive trade, the grant of soil being less extensive and more ambiguous) it has no particular limit, for it embraces all countries which could be reached either by "water or land" through Hudson's Straits, and to limit or extend it merely to the sources of rivers discharging into Hudson's Bay, would be a construction which the Charter will in no sense admit of. But while it extends to all unknown Countries, or infidel nations, which the Company could reach through Hudson's Straits or Bay, it is at the same time inferentially and *necessarily* restricted from extending to any of those unknown parts which might be first discovered and possessed by the subjects of any other christian Prince or State. This is not indeed expressed in the Charter in relation to undiscovered territories, but it is emphatically so as regards the then state of the rights and possessions of christian Powers. While the King therefore is so careful, at least in the wording of the document, not to infringe upon the rights of others *already acquired*, it can scarcely be supposed that he meant to infringe upon the rights of others *to acquire* what then belonged to none. The inference is altogether against the supposition that King Charles meant by his Charter to deny the right of any other civilized nation to make further discoveries and appropriate the countries discovered, and, even if he had so intended it, he had not the power to alter the law of nations in this respect. Besides, the Charter is expressly one of discovery as well as trade, &c.; the advantages granted to the "adventurers" are incidental and subordinate to that greater object, but there could be no *discovery* on their part where ever they were preceded by prior discovery and possession on the part of the subjects of any other christian Prince. The right of discovery is and was so well established, and where ever considered of any importance, has been so jealously watched that volumes of diplomatic controversy have been written on single cases of dispute, and the King of Great Britain could not by his Charter annul the recognized law of nations, or limit in any degree the right of other States to discover and possess countries then unknown. It may even be considered extravagant to affirm that he could convey a right of property to territories *not then* but which might *afterwards* become his or his successors' by the prior discovery and possession of the Company themselves, his subjects: were it necessary to dwell upon this point it could easily be shown that most of the territories now claimed under the Charter, which were not discovered at that date,

the Company were not afterwards the first nor were any other British subjects the first discoverers of; that in fact, except the Coppermine River, the Company never discovered anything or penetrated beyond the *Coasts and Confines* of the Bay (to which perhaps they at that time justly considered their rights restricted) for upwards of a hundred years after the date of their Charter, and that when they did so penetrate, the only *discovery* they made was that the whole country, in the interior had been long in the peaceful possession of the subjects of another christian Prince.

But the position, as regards discovery after the date of the Charter, it is unnecessary to dwell upon, particularly as an adverse title can be proved prior to the date of the Charter, and that too sanctioned by treaty.

1497. The early discovery and occupation of the country in and about Hudson's Bay are, as in many other cases, shrouded in a good deal of obscurity. The British claim as the first discoverers of the whole coast of this part of North America, in the persons of John and Sebastian Cabot, about the year 1497, but it is contended on the other hand that their discoveries did not extend to the north of Newfoundland, which still retains the name they gave it and which they supposed to form part of the main land. It is *said* indeed that the Cabots penetrated to a very high latitude far to the north of the Straits now bearing the name of Hudson; but it must be remarked that there appear to be no authentic records of the two voyages of the Cabots, their journals or observations. There appears to be only *hearsay* evidence of what they did, or where they went, told afterwards at second hand to third parties. The voyages of the Cabots therefore, although they are matters of history, not admitting of any reasonable doubt, in a general way, as to their having reached the coast of America, lose much of their force as the bases of specific territorial claims, from the want of any record of their proceedings. Did they ever land? If so, where? What observations did they make? Did they take formal possession? &c.

1504. The French claim through Fishermen of Brittany who established Fisheries on the coast as early as 1504, and through a map published by Jean Deny, of Honfleur, in 1506. The map would be valuable if any authentic copy of it be extant. There does not appear to be any such record of the operations of the Breton Fishermen as would fix precisely the spot where their trade was carried on, though a British geographical work, published in 1671, with a map attached, fixes it at Hudson's Straits, naming the country after them, on the south side of the Straits and within the Bay. The next navigator through whom the French claim is maintained is John Verezani, who visited the country by order of Francis the First of France, in 1523-4. This is the first voyage, in behalf of either France or England, of which any authentic and circumstantial record exists, as written by the navigator himself, who gave the country the name of New France. In 1534, Jacques Cartier's discoveries commenced, and these are so well known that it is unnecessary to say more of them.

Ogilby, London, 1671,
1523-4.

1534.

Thus, then, it appears that the Cabot's voyages, unsustained by any authentic record, affording no means of basing even a probable surmise as to whether so much as a landing was effected, formal possession taken, or any act done to constitute the assumption of sovereignty or territorial dominion, comprise the only grounds on which England can

base a claim to the country north of Newfoundland, prior to the voyage of Jacques Cartier. Apart, therefore, from the question of "*beneficial interests*" (to use the expression of a British diplomatist) which were acquired by France, commencing with the discoveries of Cartier, the preponderance of *admissible* evidence is altogether in favor of French discovery of that part of the continent between Newfoundland and Hudson's Bay. But, even if the question rested altogether between the unauthenticated discoveries of the Cabots and the commencement of settlement by Cartier, it would not be inappropriate to assume the British view of a similar question as maintained in the Oregon dispute, in the following words:

"In the next place, it is a circumstance not to be lost sight of, that it (the discovery by Gray) was not for several years followed up by any act which could give it value in a national point of view: it was not in truth made known to the world either by the discoverer himself or by his Government."

1553. The next English attempts at discovery commenced in 1553, when Willoughby penetrated to the north of Hudson's Bay, which, however, he did not discover or enter. This was nineteen years after Jacques Cartier's first voyage and was followed by various other attempts at finding a north-west passage, all apparently directed to the north of Hudson's Straits until 1610, the period of Hudson's voyage, in which he perished after wintering in the Bay which bears his name; but by this time it must be observed that Canada was colonized by the French.

In 1540, De Roberval was made Viceroy of Canada, the description of which as given in his commission included Hudson's Bay, though not then of course known by that name.

L'Escarbot gives a full description of Canada at the period of De la Roche's appointment in 1598, as follows:

"Ainsi notre Nouvelle France a pour limites du côté d'ouest les terres jusqu'à la mer dite Pacifique au-delà du tropique du cancer; au midi les îles de la mer Atlantique du côté de Cuba et l'île Espagnole; au levant la mer du nord, qui baigne la Nouvelle France; et au Septentrion cette terre, qui est dite inconnue, vers la mer glacée jusqu'au Pôle Arctique."*

Notwithstanding failures and difficulties, France continued the effort to colonize Canada, and in 1598 De la Roche was appointed Governor of the whole of Canada as above described: In 1603 or 1604 the first exclusive charter was granted for the fur trade of Canada up to the 54th degree of north latitude: in 1608 Champlain founded the city of Quebec, and in 1613 he accompanied his Indian allies, to the number of between two and three thousand, up the Ottawa and by Lake Nipissing and the French River to war with a hostile nation at the Sault St. Marie. It must now be observed that the great incentive to the colonization of Canada was the enormous profits of the fur trade, without which it is scarcely likely that such persevering efforts would have been made for that purpose while so many countries with more genial climates remained in a manner unappropriated.

Tadousac, at the mouth of the Saguenay River, was the first important Post established by the French on the St. Lawrence; it was the entrepot of the fur trade before Quebec was founded, and continued to be so afterwards.

* Therefore, New France has for boundaries on the west the Pacific Ocean within the Tropic of Cancer; on the south the Islands of the Atlantic towards Cuba and the Spanish Island or Hispaniola; on the east the Northern sea which washes its shores, embracing on the north the lands called unknown, towards the Frozen sea, up to the Arctic Pole.

1640. Jefferys p. 38.
1598.
L'Escarbot, Ed. 1611,
Vol. 1, p. 31.

1603-4.
1608.
1613.

This will not be deemed extraordinary when it is considered that the Saguenay River afforded the best means of access into the interior and was the best inland route; in fact is the best canoe route yet to the Great Bay now bearing the name of Hudson. There is indeed no authentic record of any of the French having made an overland journey to the Bay at so early a period, but when it is considered at what an early date the *Coureur de Bois* traversed the whole country in search of peltries, how readily they amalgamated with the Indians, who in that locality were in friendly alliance with them, and when it is also considered what extraordinary journeys the Indians undertook, as instanced by the war carried into the enemy's country at the Sault St. Marie, already referred to, the presumption is that the fur traders of Tadousac not only enjoyed the trade of the Great Bay, but must also have penetrated very far in that direction, if not to the Bay itself, a journey at the most of less distance and not greater difficulty than that which Champlain successfully accomplished with an army, while it had the strong incentive of profit to stimulate it. It is not necessary, however, to prove that every corner of the country known to the world as New France or Canada had been first visited by the actual possessors of the region so known.

1610.

1612.

1545.

However strong the probabilities therefore of the *Coureur de Bois* having been in communication with the great northern Bay before the visit of Hudson, in 1610, or of Button who succeeded him, in 1612, it is not necessary to base any argument thereon; nor is it necessary to dwell on the reputed voyage of Jean Alphonse, of Saintonge, in 1545, which, although quoted by French historians, does not appear to be sufficiently authenticated. For, granting that the rights accruing from discovery resulted from the voyages of Hudson and Button, these discoveries were practically abandoned, in fact were never dreamt of being followed up by way of occupation, the finding of a north-west passage having been their sole object; but, waiving even this point, it will be found that the rights of France were made good by international Treaty long before the Charter of Charles the Second was granted.

It will be seen from L'Escarbot's description, and those contained in the Commissions of the Governors already referred to, that France claimed the whole country extending to the north of Hudson's Bay, her title resting in the first instance upon the discoveries already mentioned, of which those of Verezzani, Cartier and Champlain are of unquestioned authenticity, to which they had added, when L'Escarbot wrote in 1611, the title resulting from actual possession in the shape of permanent settlement. England, on the other hand, claiming under Cabot's discovery, denied the right of France generally to the whole and practically to the more southerly parts where she endeavoured to plant settlements of her own, in which she was successful at a period somewhat later than the French. The fact is, each was trying to grasp more than they could take actual possession of; and if mere discovery of parts of a continent without actual possession or settlement were made the basis of permanent rights, neither of the contending parties would perhaps have had any right at all. Gradually the state of the actual possessions of the two powers settled down into a sort of intelligible shape, though without any very distinct boundaries, the most northerly of the English possessions being known as New England, and all

the country to the north thereof being known as New France or Canada, where the French *only* were in possession, there being no possession or settlement of any kind to the north of them. Still had England colonized Hudson's Bay at that period and been successful in keeping actual possession of it, she would just have had the same right to do so that she had to colonize New England. That England persevered with extraordinary energy in trying to find a north-west passage there can be no doubt, nor does it appear that France, though publicly claiming the country, made any objection, but neither country made the most distant attempt at settlement or actual occupation of those remote and inhospitable regions at that period.

1615. In 1615 another expedition was made into Hudson's Bay, in search of
 1627. a north-west passage by Baffin & Bylot. In 1627, the Quebec Fur Com-
 1629. pany was formed under the auspices of Cardinal Richelieu and an exclusive
 Charter granted to them for the whole of New France or Canada, described as
 extending to the Arctic Circle. In 1629, Quebec was taken by the British,
 as were also most of the other principal towns founded by the French in
 Acadia and Nurembega (now Nova-Scotia and New-Brunswick), which
 were then Provinces of New France, the two nations being then at war.
 1631. In 1631 Fox and James, on two different expeditions, prosecuted a further
 search for a north-west passage in Hudson's Bay, and from the latter of
 these navigators the southerly part of the Bay takes its name.

At this period the authenticated voyages of the English into Hudson's Bay were, Hudson in 1610, Button in 1612, Bylot and Baffin in 1615, and Fox and James in 1631; the numerous other expeditions having been all apparently directed to the north of Hudson's Straits. At the same time the extent of New France or Canada, as claimed by the French, was publicly known throughout the civilized nations of Europe. It is not necessary to say, that that claim was admitted by Great Britain, it is sufficient that it was known. British authorities even of a later period it must be observed, have contended that the French were intruders in America altogether in violation of the title accrued through the discoveries of the Cabots, and had no right whatever to any part of it *until acquired by treaty*. It therefore becomes immaterial whether the claims of the French were disputed or not so far as they were afterwards confirmed or a title created by Treaty.

1632. In 1632, peace was concluded, and by the Treaty of St. Germain en Laye, Canada or New France was relinquished to the French without any particular designation of its limits, and the British Forces were to be withdrawn from the places they had taken, which being the most important, including the seat of government, might almost be said to have amounted to the conquest of the whole country.

Admitting, then, that but a disputed title of discovery had previously existed on either part, nay admitting more that the right vested by prior discovery was in England, this treaty sets the matter at rest as regards all that was at that time called by the name of New France or Canada. There is indeed no getting behind this treaty, of which the Charter afterwards granted by Charles the Second, was in fact, but for the saving clause it contains, a violation, and Canada might well be content to rest her case here as against a Charter which, referring to a country previously guaranteed by

the treaty to a foreign power is expressly conditioned (as a Charter of discovery) not to interfere with what belonged to that other power. If, as is asserted by some English writers, France had no rights in America but such as she acquired by Treaty, what, it may be asked, were the limits of the territory she acquired by the Treaty of St. Germain's En Laye, if not all that she claimed under the name of New France? It must be observed too that Champlain, the Viceroy of Canada, was made prisoner when Quebec was taken in 1629, and carried to England where he remained for some time, and that the very year in which the Treaty was entered into, he published a work, containing a map of New France, by which Hudson's Bay was included in the country so called. Can it then for a moment be supposed, with Champlain, the Viceroy of New France, a prisoner in their hands and their flag floating in triumph from the battlements of its Capital, that the British Government and the Diplomats who negotiated the Treaty were ignorant of the meaning attached to the terms "Canada" or "New France," or could attach any other meaning to those terms than that which Champlain's published maps of a previous date indicated, and with which the descriptions of other French writers whose works were known throughout Europe coincided? Can it be supposed that in the negotiations preceding the Treaty, Champlain's views of the extent or boundaries of his Viceroyalty were wholly unknown or that the British Diplomats meant something less by the appellation than what was known to be understood by France? If, indeed, something less than the known extent of country called New France had been agreed upon, some explanation would undoubtedly have been contained in the Treaty, or, if there had been any misunderstanding on the subject, the map which issued the same year, in Champlain's work of 1632, would at once have been made a cause of remonstrance, for, coming from the Chief Officer of the Colony, who was re-appointed to or continued in his office after the Peace, and published in Paris under the auspices of the King, it could not be otherwise looked upon than as an official declaration of the sense in which France regarded the Treaty.

Even, then, if the rights of France were wholly dependent upon international Treaties, her right became as good by the Treaty of St. Germain's en Laye to the shores of Hudson's Bay as to the shores of the St. Lawrence. If she had rights before, the Treaty confirmed them, and if she had no rights before, the Treaty created them; and, in either case, the effect was as great in the one locality as the other. Every further step, however, in the history of the country will only tend to shew that even if there had been no such treaty as that of St. Germain en Laye, the Charter could not be sustained in opposition to the rights of France.

1632.

1668.

The provisions of the treaty of 1632, seem to have been respected for a period of 36 years, when in 1668, the next English expedition entered the Bay, which was the first *trading voyage* ever made by British subjects to the Bay, and which resulted in the formation of the Hudson's Bay Company and the grant of the Charter two years after. In saying that this was the first purely commercial enterprise of the British in Hudson's Bay, it is not meant to be implied that no trade was had with the Indians by those engaged on the former expeditions, but that such enterprises were undertaken with the definite

object of reaching the Pacific and without the least idea of any practical occupation of, or trade with the country.

The British having ceased any attempt upon Hudson's Bay from the time of Fox and James' voyages and the Treaty of St. Germain en Laye for a period of 36 years, it now remains to be seen what the character of this their next attempt was, and what had been the circumstances of the country in the interim.

That the name of Canada or New France continued to attach to the whole country during that period is indisputable; the French published maps of these times, leave no doubt upon the subject, and when we find the French not only designating the country by these names in their maps published by royal authority, but also entering upon the practical occupation of the since disputed parts of the country so designated, the carrying on of the trade with it both by sea and land, and the establishing of missions, all within the period intervening between the Treaty of St. Germain En Laye and the granting of the Charter, or the voyage which preceded the Charter, and all without interference on the part of Great Britain, we must conclude that the rights of the French were incontestable, and that if ever an adverse claim had been preferred it was considered to have been abrogated by the Treaty.

1656.

In 1656 the first exclusively commercial sea voyage was made into Hudson's Bay by Jean Bourdon, who found the trade in Furs so profitable that others immediately followed. The first missionary establishment was made there in 1663 by La Couture, who went over land by direction of D'Avagour, Governor of Canada, who had been twice solicited by deputations of Indians from the Bay to send them missionaries, and now the French being fully established in the trade and in the occupation of the Country both by sea and land, of the coast and of the interior, the English "Adventurers," first appear upon the scene, in a business way, under the countenance of two Canadians, DeGrözelier and Radisson, who having been already engaged in the trade of the Bay and having failed in procuring certain privileges they desired from their own Government, went to England and induced some Englishmen to join them in a trading voyage in 1668, which was so successful that, as already stated, it resulted in the formation of a Company and the grant in 1670, of one of those extraordinary Charters which were so much in vogue in those days that the whole of the Continent of America, north of the Gulf of Mexico, known and unknown, may be said to have been covered by them, and some of it doubly so if the vague and ambiguous descriptions, of which this was the most vague, could be said to mean any thing.

1663

1688.

1670.

This was the origin of the Hudson's Bay Company, and they immediately commenced to build forts and establish themselves in the trade, but no sooner was this known in France than orders were given to expel them. Accordingly a desultory warfare was kept up for a number of years between the Canadian traders and the Company in which the latter were nearly expelled, but again recovered themselves and strengthened their position when it became necessary to take more effective means for their expulsion. Troops were accordingly dispatched from Quebec overland for that purpose under the Chevalier De Troyes, who commenced his work

1686.

very effectually by taking the principal Forts of the Company. It must be observed, that this was in 1686, in time of peace between Great Britain and France, and yet these proceedings were not made a cause of War, which in itself would strongly imply an admitted right on the part of France to extirpate the Company as trespassers upon her territory.

1697.

War having afterwards broken out, the Forts on Hudson's Bay were successively taken and retaken, 'till the peace of Ryswick, in 1697, put a stop to hostilities, at which time the British appear to have been possessed of Fort Albany *only*, the Canadians having possession of all the other establishments and the trade of the Bay.

Treaty of Ryswick, 7th and 8th clauses.

By the Treaty of Ryswick, Great Britain and France were respectively to deliver up to each other generally whatever possessions either held before the outbreak of the war, and it was specially provided that this should be applicable to the places in Hudson's Bay taken by the French during the peace which preceded the war, which, though retaken by the British during the war, were to be given up to the French. There could scarcely be a stronger acknowledgment of the right of France to expel the Company as trespassers upon her soil, for it is impossible to construe the Treaty in this particular otherwise than as a justification of the act.

Moreover, commissioners were to be appointed in pursuance of the Treaty, to determine the rights and pretensions which either nation had to the places in Hudson's Bay. Had these commissioners ever met, of which there appears to be no record, there might have been a decision that would have set the question at rest as to which were "*rights*" and which were "*pretensions*." The commissioners must however have been bound by the text of the Treaty wherever it was explicit. They *might* have decided that France had a right to the whole, but they could *not* have decided that Great Britain had a right to the whole. They would have been compelled to make over to France all the places she took during the peace which preceded the war, for in that the treaty left them no discretion. The following are the words of the treaty: "But the possession of those places which were taken by the French, during the peace that preceded this present war, and were retaken by the English during the war, shall be left to the French by virtue of the foregoing article." Thus the treaty of Ryswick recognised and confirmed the right of France to certain places in Hudson's Bay, distinctly and definitely, but it recognised no right at all on the part of Great Britain, it merely provided a tribunal to try whether she had any or not.

So strongly has the treaty of Ryswick been interpreted in favor of France in this particular that some historians merely state the fact, that by it she retained all Hudson's Bay, and the places of which she was in possession at the beginning of the war.

1713.

The Commissioners having apparently never met to try the question of right, things remained *in statu quo*, and the most reliable accounts shew that the Hudson's Bay Company retained possession of Fort Albany *only* from that time up to the Treaty of Utrecht in 1713. Now whatever the Commissioners might have done, had they ever passed judgment on the cause the Treaty provided they should try, they could not have given Fort Albany to the British, for it was one of the places taken by the French

during the preceding peace and retaken by the British during the war, and therefore adjudged in direct terms of the Treaty itself to belong to France.

Thus then it will be seen, that the only possession held by the Hudson's Bay Company during the sixteen years that intervened between the Treaty of Ryswick and the Treaty of Utrecht was one to which they had no right, and which the obligations of the Treaty required should be given up to France.

Here, therefore, for the second time an International Treaty interposes a barrier against the pretensions of the Company.

By the Treaty of Utrecht in 1713, the whole of Hudson's Bay was ceded to Great Britain without any distinct definition of boundaries, for the determining of which Commissioners were to be appointed. No official statement of the action of such Commissioners is at present available for reference, but it is stated that no such action threw any additional light upon the subject. Indeed no such Commissions ever have done much to determine boundaries in unexplored countries, as witness for instance the dispute so long pending on what was called the North Eastern boundary question between Great Britain and the United States, which was finally compromised by the Treaty of Washington concluded by Lord Ashburton; and again the difficulties arising out of the same ambiguous description, and which so many Commissions endeavoured in vain to settle between the Provinces of Canada and New Brunswick.

There is no denying the fact that the ancient boundaries of Canada or New France were circumscribed by the Treaty of Utrecht, and it is difficult to determine precisely the new boundaries assigned to it. The general interpretation adopted by the British geographers, as the country gradually became better known from that time up to the final cession of Canada, was that the boundary ran along the high lands separating the waters that discharge into the St. Lawrence from those that discharge into Hudson's Bay to the sources of the Nipigon River, and thence along the northerly division of the same range of high lands dividing the waters flowing direct to Hudson's Bay from those flowing into Lake Winnipeg and crossing the Nelson, or rather (as it was then known) the Bourbon, River, about midway between the said Lake and Bay, thence passing to the west and north by the sources of Churchill river, &c., no westerly boundary being anywhere assigned to Canada. It may indeed be held doubtful whether the terms in which Hudson's Bay was ceded could possibly be interpreted to mean more than the Bay and its immediate environs, but whatever the legitimate interpretation of the Treaty, the actual acceptance of it gave to France at least all to the south of the dividing high lands above described, for she remained in undisputed possession thereof until the final cession of Canada in 1763: while on the other hand the acceptance of it on the part of Great Britain, as proved by the same test of occupation, confined her at least to the north of the said high lands, if not to the very shore of the Bay, beyond which her actual possession never extended.

It must here be observed, however, that the treaty of Utrecht conferred nothing upon the *Hudson's Bay Company*. It gave them nothing that was

not theirs at the treaty of Ryswick, and the treaty of Ryswick gave them nothing that was not theirs before. The Charter obtained from King Charles the Second, may have granted all that was his (if any thing) to grant in 1670, but it would have required a new Charter to have granted what France ceded to Great Britain forty-three years afterwards. No doubt the treaty of Utrecht had this important bearing upon the Company that, although it conferred no territorial rights upon them, the territory it conferred on Great Britain was then inaccessible to British subjects by any other route than through the Bay and Straits of Hudson, over which (if over any thing) the Company's Charter gave exclusive control, and over which, whether rightfully or wrongfully, they have exercised such control.

1763. Matters continued in this state as regards the territorial rights of Great Britain and France for 50 years more, when Canada was ceded to Great Britain by the treaty of Paris in 1763. During this period the Hudson's Bay Company occupied the posts on the coasts of the Bay, and these only, having made no attempt to penetrate into the interior or occupy even what the *British Geographers* of the time construed the treaty of Utrecht as conferring, not upon the Company, but upon Great Britain; while on the other hand the French had covered that part of New France which still remained to them, (according to the British authorities) with posts or forts from the Lake of the Woods to the lower end of Lake Winnipeg, and remained in peaceable possession thereof, and in the most active prosecution of the trade, until the whole country was given up to the British by the peace of Paris, in 1763; by which, however, nothing was conferred upon the Hudson's Bay Company any more than there had been by the treaty of Utrecht, the rights acquired by these treaties being simply in common with other British subjects.

Treaty of Paris.

For a few years about the time of the transfer of Canada from French to British Dominion, the trade of the western territories languished, from a very natural want of confidence on the part of the Canadians by whom it had, up to that time, been carried on, and who now owed a new allegiance and had to seek a new market for the produce of their industry; but a fresh impulse was soon given to it, first by separate individuals, then by small companies, and finally by the great North-west Company of Montreal, who not only spread their operations over all the territories formerly possessed by the French, but explored new countries to the north and west, while the Hudson's Bay Company had not yet made a single establishment beyond the immediate confines of the sea coast.

The temporary depression of the fur trade at the period of the transfer of Canada to British dominion was of course advantageous to the Hudson's Bay Company, for the Indians inhabiting those parts of Canada where the French posts were established, around lake Winnipeg and its tributaries, would naturally seek a market in Hudson's Bay during the comparative cessation of demand at the establishments in their midst. But when confidence was restored and a new impulse was given to the trade in the north west of Canada, the supply was again cut off from Hudson's Bay, and now the Company for the first time entered in to competition with the Canadian traders in the interior, where their first establishment was made in 1774. And why, it may be asked, did not the Hudson's Bay Company

oppose the French Canadians in the interior a few years earlier, as well as they opposed them (principally the same people,) now that they had become British subjects? The answer is very simple. During French dominion they could not do it because the country belonged to France, but by the cession of the country to Great Britain, the Company had acquired the same right as any other British subjects to trade in it and they availed themselves of that right accordingly.

From this period an active competition was carried on between these companies, but the Canadian North West Company were every where in advance of their rivals; they were the first to spread themselves beyond the limits of the French, over the prairies of the Saskatchewan; they were the first to discover the great river of the north, now bearing the name of McKenzie, and pursue its course to its discharge in the Frozen Ocean. They were the first to penetrate the passes of the northern Cordilleras and plant their posts upon the shores of the Pacific; and with such indomitable energy did they carry on their business that at the period of Lord Selkirk's interference, they had upwards of 300 Canadians, "*Voyagers*," employed in carrying on their trade to the west of the Rocky Mountains.

It would be a useless task, now to enter into a detail of the attempt made by the Earl of Selkirk, as a partner of the Hudson's Bay Company, to ruin their opponents. It is only necessary to refer to it here as the first endeavour made to exercise the privileges contended for under the Charter over those territories which had not been acquired by Great Britain till the conquest or cession of Canada. Lord Selkirk having become the principal partner and acquired a predominant influence in the affairs of the Hudson's Bay Company, it was determined to assert the assumed privileges of the Company to an extent never before attempted, and for this purpose a grant of the country on the Red River was made to His Lordship who commenced in 1811-12 to plant a colony there. * A Governor was appointed, the colonists and the servants of the Company were armed and drilled, and in 1814 the claims of the Company to soil, jurisdiction and exclusive trade were openly asserted, and for the first time attempted to be enforced by the actual expulsion of the North-West Company, several of whose forts were surprised and taken, their people being made prisoners, their goods seized and the channel of their trade obstructed by the interception of their supplies. Overawed somewhat for the moment by this bold assumption of authority, the Canadian Company appear to have avoided the contest, but when forced into it they proved the stronger: the Governor was killed in leading an attack upon a party of the North-West Company who turned and gave battle, and the colony was dispersed. This final catastrophe occurred in the spring of 1816, while in the mean time Lord Selkirk was organising a more formidable force than had hitherto taken the field. Having procured a commission of the peace from the government of Canada he engaged a large force of the disbanded DeMeuron soldiers, equipped them in military style, procured arms, ammunition, artillery even; and started for the interior.

* "Who have been the aggressors in their different quarrels, I am not able to determine, however, previous to 1811, at which time Lord Selkirk became connected with the Company trading to Hudson's Bay, and sent settlers from Europe to that country, no great differences existed between the servants of that Company and the fur traders of Canada. There might be difficulties between different posts, but seldom attended with serious consequences. Despatch of Lieutenant Governor Gore to Earl Bathurst, 9th September, 1816."

It must be allowed that it was a somewhat anomalous course for the government of Canada to have pursued to permit such a force to be organised; but when it is considered that great ignorance prevailed as to the state of those remote localities, that it was known that there had been disturbances and bloodshed the previous year, when also Lord Selkirk's position is considered, and that he went as a pacificator professedly to maintain peace, it may not be deemed so extraordinary that so much confidence should have been placed in him, for he was even granted a sergeant's guard of regular troops. It is not the object here, however, to enter into a discussion of the unfortunate occurrences of that period, or the particular action of the provincial government, and the circumstances are only referred to, to show that Canada actually exercised the jurisdiction, that Lord Selkirk's destination was the Red River colony, and that he deemed it necessary to fortify himself doubly with commissions as a Canadian Magistrate, first for Canadian territory, and second (under 43 Geo. 3rd) for the "*Indian territories*," so that those who resisted his authority on the ground that they were in Canada, he could judge under the one commission, and those who resisted on the ground that they were in the Indian territories, he could judge under the other while the judicial and governmental attributes claimed for the Company would have served as a third basis of operations; and thus with the actual force at his disposal there was a pretty fair prospect of the Hudson's Bay Company being made the absolute masters of the north-west country.

1816. At the Sault St. Marie, however, Lord Selkirk met intelligence of the death of Governor Semple and the dispersion of his colony; nevertheless he still proceeded with his force as far as Fort William, on Lake Superior, where he arrived about the 11th of August, 1816, and soon after arrested the partners of the North West Company, who were there at the time, and took possession of the whole establishment including the merchandise and stores of the Company. The course pursued on this occasion, as appears by documents published at the time, shews the character of the pretensions set up at that period—pretensions which were then and not till then presumed upon.

It will be observed that Fort William was the principal depot of the Canadian merchants, through which all their supplies for and peltries from the north-west had to pass. By seizing on this point therefore Lord Selkirk had possession of the key of their whole trade, and was enabled to permit or refuse the transit of their goods as he saw fit. For whatever purpose, therefore, he obtained his two commissions of the peace in Canada, the expedition simply resolved itself into a continuation of the attempt to destroy the North-West Company of Canada, the rivals in trade of the Hudson's Bay Company, for, however desirable it might be to assist and bring to trial all parties implicated on either side in the death of Governor Semple, there could be no excuse for seizing the persons of those gentlemen who were known not to have been at the time within hundreds of miles of the scene of that catastrophe, merely because they were partners in the North West Company, nor, even if there were cause for their arrest, did that

justify the taking possession of their property without the sanction or the form of law.*

The object of entering upon this brief record is, to point out that all this occurred at *Fort William*, on the shores of Lake Superior, within what the Hudson's Bay Company, by their map and statement of "rights," now admit to be within the boundaries of Canada. And thus it will be seen that, while the pretension of extending the privileges of the Charter beyond the "coasts and confines" of the bay to the western territories of Canada, was a mere invention of that period, to further their own ends and to destroy the rival company of Canada, they were as ready to employ force at Fort William as in the valley of the Red River.

In further proof that the transactions at Fort William were openly done in violation of Canadian law and in defiance of Canadian authority it is only necessary to add that when Lord Selkirk's proceedings became known, warrants were issued for his apprehension and a party of constables sent to arrest him, and that refusing obedience to the laws of this country and presuming upon the force for the moment at his command in that remote locality (remote *then* as regards the *time* it took to reach it, though at our doors to day) he caused the constables to be taken prisoners themselves, and treated the Deputy Sheriff of the western district, who afterwards made the attempt, in like manner.

Deputy Sheriff obtained verdict for £500, damages

This war between the Companies, though injurious to both, failed to exterminate either, and the final result was a compromise by which they entered into partnership; and thus the trade has been carried on since, under the name indeed of the Hudson's Bay Company, but *expressly* in conjunction with the North-West Company of Canada, so that Canada can at no time be said to have been out of possession of her western territories within the limits occupied by the French at the time of the conquest, nor out of possession of the "Indian Territories" beyond, which, after the conquest, were first discovered by the Canadian traders and for which the license of exclusive trade was granted to the partners of the North-West Company of Canada, as such, in conjunction with the Hudson's Bay Company.

1821.

It is true that after the amalgamation of the Companies and the license of exclusive trade granted in 1821, competition became *illegal* in the "Indian Territories," beyond the boundaries of Canada, as indeed it had always proved *impracticable* on the part of minor traders either within or beyond the remote parts of the province, small traders being altogether unable to cope with the two great Companies. It is true also that after they, the two great Companies, had been for some time united, and when by the policy pursued by them the trade had ceased to be beneficial to, and had been lost sight of in Canada, an arrangement was effected between the two sections of the united Company by which the name of the North-West Company was dropped entirely, the lease relinquished, and a new one obtained in which the name of the Hudson's Bay Company alone appeared; but it must be observed that this new arrangement was accepted and entered into by the British government by con-

* "From these Documents it appears, that the Earl of Selkirk, acting in his own cause, aided by an armed force, has not only made the Partners of the North West Company prisoners, but has also seized their Papers and Property."

Lieut. Govr. Gore to Earl Bathurst.
9th Sept. 1816.

sent of the partners representing the original Canadian Company, for although this lease or license only affects the Indian Territories beyond the actual boundaries of Canada, it can scarcely be supposed that the government would have agreed to give it, had Canadian traders still remained in the field. The policy of the Companies, when joined, has however been so far successful that they have managed heretofore to secure themselves against opposition, many no doubt being imposed upon by the pretentious but erroneous construction put upon their Charter, and the public in general kept in the dark respecting a trade which, though partly carried on in the very centre of Canada and within range of steam navigation, is so managed as to pass by a circuitous route, by the means of the primitive canoe and over portages on men's backs, away hundreds of miles into the interior and round by Hudson's Bay.

But the time has come when Canada must assert her rights, not only from that necessity for expansion which her growing population and trade require, but also because if she does not now begin to provide for the future by opening up her remote territories to colonisation, and securing the loyalty and attachment of the people by extending thereto the rights and privileges of her laws and institutions, there is a moral certainty that a power far more formidable than the Hudson's Bay Company must in a very short period become the actual possessors of those countries.

This brief chronological sketch of the history of the Company and of the circumstances connected therewith, must sufficiently shew that they have acquired no territorial grant, whatever under either of the two conditions stated to which their Charter was subject: first as regards the countries then known upon the "coasts and confines" of Hudson's Bay, because they were already in the possession of the subjects of another christian Prince, and were therefore excluded from the grant in terms of the Charter itself; and second, as regards discoveries, because when they first penetrated into the interior, 104 years after the date of their Charter, they found the country and a long established trade in the hands of others, — unless indeed as regards some discoveries to the north which are of no special importance to Canada, such as the Copper Mine River, discovered by Hearne under the auspices of the Company.

Under the first head the most sanguine advocate of the Company, upon a full investigation of all the circumstances, could only urge on their behalf a claim to certain points, or stations on the sea coasts of the bay, and even to these a doubtful and disputed title.

The high legal authorities that may be quoted in favor of the claims of the Company cannot be held as of weight against the conclusions inevitably resulting from a fuller investigation of the subject, inasmuch as they are merely opinions upon the cases submitted. The latest opinion given upon the subject is that of Sir John Jervis and Sir John Romilly in their letter to Earl Grey, of January, 1850, in which they give it as their opinion, "That the rights claimed by the Company do properly belong to them." Before arriving at this conclusion, however, these learned gentlemen are careful to specify precisely what papers they had then under consideration, and to which alone they refer as the basis of their opinion. These papers were

simply the "*Statement of Rights and the Map*" submitted by the chairman of the Company, Sir J. H. Pelly.

1690.

This opinion, therefore, can only be taken as affirmative of the power of the King to grant such rights and privileges as the Charter specifies, and that the Charter would cover all the territory claimed, but the question of whether that territory belonged to the King to grant was not before them. With respect to the territory which the wording of the Charter would cover, it would be difficult to say what it would not cover; and with respect to the validity of the grant of such powers, it is to be remarked that very high authorities have given a directly opposite opinion; and it may be asked why, if the Charter was valid, did the Company procure an Act of Parliament to confirm it in 1690, and why when that Act expired, which was limited to seven years, did they again ask for an Act to continue it? It is worthy of notice, too, that the seven years Act was passed during war with France, when it appears that Parliament did not scruple to grant or confirm a Charter for countries to which Great Britain had, at best, but a disputed title, based only upon a very partial, and, even during peace, a very precarious possession; nor is it less worthy of remark, that, when Parliament refused to re-grant or continue the Charter the Treaty of Ryswick had intervened, by which the rights of France were recognised, and those of Great Britain left, at most, in doubt, and when, therefore, any such Act would have been a direct violation of an international Treaty.

Another opinion appears to have been obtained by the Hudson's Bay Company at an earlier period, from Romilly, Holroyd, Cruse, Scarlett and Bell, equally upon the case drawn and without reference to the real points at issue, merely affirming that the grant of the soil contained in the Charter is good, and that it will include all the countries the waters of which flow into Hudson's Bay. This opinion is therefore, like the other, of no weight on questions which were not before the learned gentlemen who gave it.

Opposite opinions were obtained at an earlier period by the North-West Company, viz: in 1804, from Sir V. Gibbs and Mr Bearcroft. These opinions, however, although they touched the fundamental principles of the Charter, had no reference to the interior countries on the Red River, Lake Winnipeg, the Saskatchewan, &c., for the simple reason that no opinion was asked on a case which only arose six or seven years later, when Lord Selkirk came on the field.

The position of the question at this period was that the North-West Company being in possession not only of all the country formerly possessed by the Canadian French in that direction, but also of the country first discovered by themselves, to the north-west of the Churchill River, came to the conclusion that their trade could be more conveniently carried on with these more remote parts through Hudson's Bay than through Canada. The question they submitted therefore was solely in regard to the validity of the Charter in respect of the navigation, trade and fisheries of the Bay itself. The North-West Company as little dreamt of asking an opinion respecting the legality of their trade in the interior as the Hudson's Bay Company thought, at that period, of attempting its forcible restraint. In the case put it is to be remarked that no reference is made to the early possessions of the French on the coasts of the bay, and

consequent possession of the bay itself in communicating therewith, and yet, even without this, these opinions are entirely adverse to the exclusive privileges claimed under the Charter.

After the difficulties occasioned by the more recent assumption of power in virtue of the Charter to expel the North-West Company from the Red River country, under the auspices of Lord Selkirk, had become serious, another opinion was obtained by that Company in 1816, from Sir Arthur Pigott, Sergeant Spankie and Lord Brougham. This opinion must be held to be more valuable than those obtained by the Hudson's Bay Company, inasmuch as it enters more into the merits of the case and is therefore more explicit as to the real views of the learned counsel on the subject submitted to them, whereas the opposite opinions are such as the gentlemen who gave them would be at liberty to ignore upon a fuller submission of the case, without incurring a charge of inconsistency.

The opinion under consideration is very decided on the point that the Red River and Saskatchewan Countries are not within the limits of the Charter, even upon the merits of the description contained in the Charter itself, apart from the question of prior possession by another State. The question of prior occupation of these localities by the French is indeed lightly touched upon though the opinion, as above, is definitely given without it; but the rights of Canada now for the first time fully discussed, based on prior discovery, at least of the whole of the interior, prior occupation on the shores of the bay itself, and international Treaties, do not appear to have ever been pronounced upon by any of those high legal authorities who have heretofore been consulted, because no such case has ever been submitted; and yet, based upon history and facts it may be taken to supersede all necessity for raising any question as to the extent of the royal prerogative in giving validity to such a Charter.

Had the Hudson's Bay Company indeed deemed their position good in law, as against the North-West Company, in respect of the Red River country, it can scarcely be supposed that they would have resorted to force at such a lavish expense (and it must be added, involving no small amount of bloodshed) when the question could have been so easily determined by the legal tribunals, at an expense altogether inconsiderable as compared with the actual losses and costs incurred. They have indeed attempted to shew that they had not an equal chance with their rivals in the courts of this Province; but not to speak of the injustice of such an insinuation in itself, the objection is untenable while *they had the right of appeal*, and to suppose that they were deterred from taking such a course from any difficulty attending the proceeding would be simply absurd, when we find them organising an *army* to defend their claims in those remote localities, and thus voluntarily removing the venue from the courts of law by a far more difficult and expensive process to the arbitrament, of force where the interference of law could not be so readily invoked to check their proceedings.

And if any justification of this course could be based on the supposed validity of their Charter, and on the ground that it could be construed to cover that locality, why, when they failed to maintain their position by force, when the North-West Company even after the temporary interruption

of their trade through the seizure of Fort William by Lord Selkirk, still continued in the ascendant, why did they not then resort to a trial at law, which, if it had resulted in their favor, would at once have secured a power exactly commensurate with the emergency to maintain their rights, for then, if the civil power had proved insufficient the whole power of the empire would have been available as far as necessary. But instead of trying the issue in a Court of Law they finally amalgamated with their rivals, affording thereby a clear proof that they had no hope of being able to treat them otherwise than as possessing equal rights, thus consenting to their opponents sharing with them what they had previously contended to be their private property.

To conclude the question of the Hudson's Bay Company's territories under their Charter, therefore, it is difficult to arrive at the result that they have any territorial rights at all, for in the first place the country was practically occupied by the French before the date of the Charter and consequently excluded from it, and in the second place because the whole country, including Hudson's Bay, was known as New France or Canada, as per maps and descriptions publicly known throughout Europe previous to that date, and therefore, if not so before, became the property of France by the Treaty of St. Germain en Laye, in 1632, and as such *necessarily could not be* and *expressly was not* granted by their Charter, and in the third place, because by the Treaty of Ryswick the right of France to expel them as trespassers on her soil was manifestly admitted. And finally, even assuming that Great Britain originally had acquired a divided right with France, each to the extent of the establishments which their subjects respectively were the first to form, the Hudson's Bay Company would only have a right, under their Charter, to those particular posts, or forts, which they were the first to take possession of in localities previously unoccupied, for the Treaty of Ryswick conferred nothing upon them (if it even permitted them to retain any thing, which is doubtful) the Treaty of Utrecht, although, it gave Hudson's Bay to the British, conferred nothing upon the Company, apart from other British subjects, and the Treaty of Paris (although it gave Canada to Great Britain) conferred nothing upon them, except rights in common with other British subjects; while, until eleven years after the last named Treaty they never occupied anything beyond their original establishments on the coast, and those (also on the coast) conquered from or ceded by France at the Treaty of Utrecht, but which could not, by such subsequent conquest or cession be made subject to their Charter.

BOUNDARIES OF CANADA.

Having thus disposed of the boundaries of the Hudson's Bay Company's Territories—if such can be said to exist—the boundaries of Canada next came to be considered, and a division of the subject will naturally suggest itself into two heads. First, the original boundaries of Canada under the French, and second, the boundaries of Canada as acquired by Great Britain in 1763. The southerly boundaries, when not affecting the present question, need not of course be particularly referred to.

It will not be necessary to enter at length into the question of the original boundaries under the French as they have already been sufficiently indicated. They *claimed* all to the north of the St. Lawrence, and were

If the first to *occupy* Hudson's Bay. the British, besides their visits in search of a north-west passage, had seen fit to occupy the country for any practical purpose and been the first to do so, they might no doubt have claimed it for their own. Had any such actual occupation followed the voyages of Hudson and Button, notwithstanding the French footing on and claim to the whole continent north of the St. Lawrence, it must have been admitted that a valid title would have been created. But when such occupation was only first attempted some fifty to sixty years later, in support of a commercial project of two Frenchmen who had been already engaged in the trade, and when France was in formal and actual possession, it cannot be denied that the French title was the preferable one. Of the original territories of Canada, Great-Britain therefore acquired a part by the Treaty of Utrecht, the residue remaining to France for fifty years later. On this head there seems to be no dispute, for British authorities designate a part of what they claim to have been acquired by that Treaty as Canada.

It now remains to be considered what were the boundaries of the country finally acquired by the treaty of 1763, which, according to French and other authorities, was much larger than according to British authorities; but it will perhaps be most satisfactory for the present to adopt the latter.

One of the most circumstantial British accounts of the westerly possessions of the French is to be found in a geographical and historical work published by Thos. Jefferys in 1760. After giving the French account of Canada, he proceeds to give the English version of its boundaries in the following words:

"Canada, according to the English account, is bounded on the north by the high lands which separate it from the country about Hudson's Bay, Labrador or New Briton, and the country of the Eskimeaux and the Christeneaux; on the east by the River St. Lawrence, and on the south by the Outawais River, the country of the Six Nations and Louisiana, its limits towards the west extending over countries and nations hitherto undiscovered."

The high lands referred to in the above are distinctly delineated on the maps published with the work as the northerly section of the range which, dividing to the north-west of Lake Superior, separates the waters flowing direct to Hudson's Bay from those flowing into Lake Winnipeg, crossing the Nelson River at Lac des Forts, &c. Describing the country from Lake Superior westward the author goes on, at page 19, as follows:

"At the mouth of Les Trois Rivières, or the Three Rivers, is a little French Fort called Camenistagouia; and twenty five leagues to the west of the said fort, the land begins to slope and the River to run towards the west."

"At ninety-five leagues from this greatest height lies the second establishment of the French that way, called Fort St. Pierre, in the Lake des Pluies. The third is Fort St. Charles eighty leagues farther on the Lake des Bois. The fourth is Fort Maurepas, a hundred leagues distant from the last, near the head of the Lake of Ouinipigon. Fort La Reine, which is the fifth, lies a hundred leagues further on the river of the Assiniboels. Another Fort had been built on the River Rouge, but was deserted on account of its vicinity to the two last. The sixth, Fort Dauphin, stands on the west side of Lac des Prairies, or of the Meadows, and the seventh, which is called Fort Bourbon, stands on the shore of the Great Lake Bourbon. The chain ends with Fort Poskoyac, at the bottom of a River of that name, which falls into Lake Bourbon. The River Poskoyac is made by Delisle and Bunche to rise within twenty-five leagues of their west sea, which, they say, communicates with the Pacific ocean. All these Forts are under the Governor of Canada."

The above, it will be observed, is the English account of what was still French Canada in 1760, just after the taking of Quebec and before the final conquest and cession of the country. The River Poskoyac is that which now bears the name of the Saskatchewan, upon which Sir Alexander

McKenzie states that the French had another Fort higher up than Fort Poskoyac. *

The same author, Jefferys, in his description of Louisiana, says : " It is bounded on the N. by Canada ; on the E. by the British Colonies of New-York, Pennsylvania, Maryland, Virginia, &c., &c." The map accompanying this description claims the British Colonies, Virginia, &c., as coming up to the east bank of the Mississippi, and therefore it is Louisiana west of the Mississippi that he refers to as bounded by Canada on the north, that is to say, from the sources of the Mississippi westward.

The same year in which this work was published, all Canada was surrendered to the British, though not finally ceded till three years after.

In surrendering the country to the British the Marquis de Vaudreuil submitted articles of capitulation which were marked "granted," or "refused, etc." according as they were finally agreed to by General Amherst. In guarding the interests of the Canadian colonists in every part of the country surrendered, the localities above described by English authority as being under the " Governor of Canada," are designated as the *Countries above*, and the 46th article of the capitulation is as follows :

" The Inhabitants and Merchants shall enjoy all the privileges of trade under the same " favors and conditions granted to the subjects of Her Britannic Majesty as well in the *Countries above* as in the interior of the Colony.—Granted."

By which these countries were manifestly surrendered along with the rest of Canada, and the future rights of the Canadians guaranteed thereto by the provision that no British Subjects should ever enjoy any privileges of trade there in which they did not share ; not indeed that this guarantee, although it would decidedly have that effect, could have been foreseen as a safeguard against the Hudson's Bay Company who had never at that period penetrated into the country, it being simply intended to prevent any cause whatever from depriving the French colonists of the benefits of a trade which had always been one of the most important in the country.

1761.

In the negotiations for peace that followed in 1761, which were directed on the one part by Mr. Pitt, and by the Duke de Choiseul on the other, and which ended, for the time, in failure, France contended for the boundaries of Louisiana extending to Canada, which Great Britain opposed. Finally, the Treaty of 1763 allowed Louisiana to extend west of the Mississippi to its source, and made that River from its source downwards the boundary between the British and French possessions, the boundary from the source of the Mississippi westward being left undetermined, a question which had ultimately to be settled with the United States instead of with France.

1846.

The system adopted and industriously followed up by the two rival Companies after their union had indeed so disseminated an erroneous appellation, that the country north and north-west of the Mississippi had come to be commonly called the Hudson's Bay Company's Territories ; but when

* " It may be proper to observe, that the French had two settlements upon the Saskatchewan, long before, and at the conquest of Canada ; the first at the Pasquia, near Carrot River, and the other at Nipawi, where they had agricultural instruments and wheel carriages, marks " of both being found about those establishments, where the soil is excellent."

Note to Preliminary account of the Fur Trade, p. LXXIII. See McKenzie's Voyages, London, 1801.

Oregon negotiations.

diplomats and statesmen came to study the subject, tracing up from history and fact their respective claims, as bearing upon the Oregon question, they did not stultify themselves by the use of such an erroneous term, accordingly we find Mr. Buchanan, now President elect of the United States, using the following language, in concluding a proposition made by him on 1st July, 1846 :

"The line proposed will carry out the principle of continuity equally for both parties, by extending the limits both of ancient Louisiana and Canada to the Pacific along the same parallel of latitude, which divide them east of the Rocky Mountains."

The same line of argument sustains the British plenipotentiary when, in arguing the pretensions of his government to Oregon, he traces the progress of the Canadians westward across the Rocky Mountains to the Pacific.

The next step in the natural progress of events is the description of Canada under British sway. The first step after the Treaty of Paris was to provide for the Government of the settled parts of the country for which purpose the Government of Quebec was organised, comprising however a very limited portion of Canada, as per proclamation of 7th October, 1763, the rest of the country being thereby reserved from survey or settlement, for the moment, for the protection of the Indians. The descriptions of Canada however of that period took in the country to the westward of Pennsylvania, by the Ohio River, to the Mississippi. And the Imperial Statute of 1774, commonly called the "Quebec Act," describes the Province as extending "Northward to the Southern Boundary of the Territory granted to the Merchants, Adventurers of England trading to Hudson's Bay," but does not specify what their boundaries are, and it will be seen, by what follows, that the construction put upon this Act, by the British Government, nine years later, was adverse to the present pretensions of the Company. The Treaty of Independence of the United States provided a new southerly boundary for Canada, a part of what had formerly gone under that name having been ceded to the United States; and by the commission issued to Lord Dorchester—the first after this treaty—the same words are used in describing the boundaries of Canada, as in the Treaty, viz :

"Through Lake Superior northwards of the Isles Royal and Philippeaux to the Long Lake; thence, through the middle of the said Long Lake and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence, through the said Lake to the most north-western point thereof, and from thence, in a due west course to the River Mississippi and northward to the southern boundary of the territories granted to the Merchants, Adventurers of England trading to Hudson's Bay."

This description, it will be seen, leaves the boundaries beyond the sources of the Mississippi indeterminate. On the supposition that a line due west from the Lake of the Woods would intersect the Mississippi, the King was obliged to limit the extent of Canada, on such line to the Mississippi proper, because by the Treaty of Paris, France retained the whole country to the west of the Mississippi from its source downwards. Had the King's Commission said from the intersection of the due west line with the Mississippi "due north," it might have been argued that it provided a westerly boundary, but it simply says "northerly," because although it was necessary to limit it to the Mississippi, where Louisiana commenced, there was no need for being specific beyond the sources of that River where the westerly boundary of Canada was yet unknown. Of the extent of Canada

Independence of United States boundary of Canada as adopted.

Lord Dorchester's Commission.

to the north by this description, it is enough to say that it was the same as by the Act 1774, and required the boundaries of the territory granted to the Hudson's Bay Company, to be defined *first*, and if that failed it had no other limit, short of its original extent under the French.

At the "definitive Treaty of Peace" with the United States their territory did not extend at any point to the West of the Mississippi, until they acquired Louisiana in 1803. It will be remembered that Mr. Pitt objected to the northerly boundary of Louisiana coming so far north as the southerly boundary of Canada in 1761; that nevertheless it was so settled in 1703 that the Mississippi should be the boundary to its source. This result seems to have been a compromise by which Louisiana was confined almost entirely to the west of the Mississippi, Great Britain thus gaining her point on the east which came more nearly in contact with her old possessions, and giving to France entire scope on the west to the very sources of the Mississippi, the boundary from thence west-ward being left undetermined. This point had accordingly to be afterwards settled with the United States, who had in the meantime acquired the rights of France. This settlement ultimately admitted the 49th parallel of latitude as the northerly boundary of Louisiana, and as such necessarily the southerly boundary of Canada from the Lake of the Woods due west to the Rocky Mountains, passing north of the source of the Mississippi proper, though intersecting some of its tributary streams, the only error in which was that the line should not have been north of the source of the Mississippi, an error resulting from a previous treaty with the United States, at a time when it was supposed that the parallel of latitude agreed upon east of the Mississippi would intersect that river.

Were the King's letters patent to Lord Dorchester indeed taken literally at the present day in regard to the southerly boundary of Canada, the due west line of the description, not intersecting the Mississippi, would go on as far as British territory, not otherwise organised, would carry it, which would be to the Pacific; or if limited at all it would be by the first waters of the Mississippi which it did intersect, which would be the White Earth River and this would in fact correspond with the extent of Canada previously known to the French, taking in all the old forts already mentioned and leaving out the "countries and nations hitherto undiscovered," that is at the time of the conquest, though at the period when that description was made the North-West Company were carrying on an active trade much farther to the west: nor is it clear that this would be adverse to the intention of the description, for some of the maps of that period represent the Mississippi as west of the Red River.

The southerly boundary of the British dominions west of Lake Superior being therefore demonstrated as identical with the southerly boundary of Canada to *some point due west* of the Lake of the Woods, the only question is as to where that point is to be found; is it the White Earth River, the first waters of the Mississippi with which the due west line intersects; or is it the summit of the Rocky Mountains, on the same principle that the *coterminous* boundary of Louisiana was ultimately so construed?

The next point to be determined is the northerly extension of Canada from its southerly boundary. The official description, corresponding with the Act of 1774, carries it to the boundary of the Hudson's Bay Company's

Territories, but the same official description ignores the boundaries they claim, (*thus proving so far the construction then put upon the Act of 1774*), for it carries the southerly boundary of Canada down the watershed of Hudson's Bay from two to three hundred miles to the Lake of the Woods, and *thence due west*, thus making the starting point far within what the Hudson's Bay Company claim, and thus, *from a point within what they claim* as their territory, it is to extend northerly to their territories. If then the "rights" of the Hudson's Bay Company were even far less equivocal than they are, their southerly boundary, as *pretended* by themselves, is entirely demolished, and the question arises *where is the boundary of their territories so described as the northerly limit of Canada?* The question of territorial rights has already been so fully discussed that it is unnecessary to repeat the arguments. The only possible conclusion is, that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson's Bay, or else that the Company's territory is—like the intersection of the due west line with the Mississippi—a myth, and consequently that Canada has no particular limit in that direction.

The accompanying map illustrates the northerly boundary of Canada, according to British authorities as ceded by the French in 1763, there being no westerly boundary then known or since provided. This is perhaps all that could in the first instance be absolutely claimed as under the Government of Canada, were it not that, since the final determination of the southerly boundary, the Imperial Government merely described the authority of this Government as extending *over all the Countries theretofore known as Canada*, which might fairly be taken to cover the territory acquired by the Treaty of Utrecht, as well as that acquired by the Treaty of Paris.

BOUNDARIES OF THE INDIAN TERRITORIES.

The boundaries of the Indian Territories need little consideration or explanation, as they simply include all that belongs to Great Britain in North America to the north and west of Canada, excepting the Territory (if any) which the Hudson's Bay Company may of right claim. It must not be lost sight of, however, that the great bulk of this territory has been acquired by the Crown of Great Britain through discoveries of its Canadian subjects, beyond whatever may be determined to be the westerly boundary of Canada, across the Rocky Mountains to the shores of the Pacific, and by the McKenzie River to the Frozen Ocean. The importance of these discoveries in the negotiations pending the Treaty of Oregon, cannot be forgotten, for it is in virtue of *Canadian Discovery* and *Canadian Settlement* that the British negociator was enabled to maintain his position in the controversy, and secure a footing for his country on the Pacific. And when, it may be asked, did ever the Hudson's Bay Company afford such an important advantage to British interests?

Sir Alexander McKenzie's journey in 1793 across the Rocky Mountains (the first ever performed north of Mexico) is thus referred to by the British Plenipotentiary, in negociating the treaty of Oregon :

"While Vancouver was prosecuting discovery and exploration by sea, Sir Alexander McKenzie, a partner in the North West Company, crossed the Rocky Mountains, discovered the head waters of the river since called Frazer's River, and following for some time the course of that river, effected a passage to the sea, being the first civilized man who traversed the continent of America from sea to sea in these latitudes. On the return of McKenzie to Canada the North West Company established trading posts in the country to the westward of the Rocky Mountains."

Oregon Negotiations.

This was the British title to that part of the country, and but for this journey and the establishing of these trading posts, by which were acquired what the same diplomatist says "may be called beneficial interests" in those regions by commercial intercourse, the probability is that Great Britain would now hold no continuous possessions across this continent, if she even held any isolated localities on the Pacific in virtue of her discoveries by sea.

Lewis and Clark, Americans, descended the southerly branch of the Columbia River, 1805, and in 1811, Mr. Thompson, of the North-west Company, came down the main branch from the north, whose discovery is thus referred to by the British Plenipotentiary :

"In the year 1811, Thompson, the Astronomer of the *North West Company*, discovered the northern head waters of the Columbia, and following its course till joined by the rivers previously discovered by Lewis and Clark, he continued his journey to the Pacific."

And again

"Thompson, of the *North West Company*, was the first civilized person who navigated the northern, in reality, the main branch of the Columbia, or traversed any part of the country drained by it."

This is the title by which Great Britain has been enabled to retain the main branch of the Columbia to its intersection with the 49th parallel of north latitude, and the free navigation for her subjects of the whole river from that point to its discharge in the Pacific Ocean, as secured by the Treaty of Oregon, 1846.

With respect to McKenzie's discoveries to the north, no diplomatic reference thereto can be quoted, inasmuch as there has been no disputed title on the part of any foreign power to give rise to any controversy upon the subject.

It may fairly be urged therefore, that these "Indian Territories" originally the fruits of Canadian enterprise, perseverance and industry should no longer be shut out from the Canadian people, but should in fact be united to Canada as a part of the British Dominions, which Canadian subjects have had the merit of acquiring and retaining for the British Crown.

JURISDICTION.

The question of jurisdiction next comes under consideration, and in this, as regards the Hudson's Bay Company, it is apprehended that the actual exercise of it is widely different from what existing laws would sanction.

The mystery with which this Company have managed to shroud their operations in the interior renders it difficult to say what they do or what they do not do, but it is generally understood that they actually exercise unlimited jurisdiction in every respect, civil, criminal and governmental, and that not only in what has been considered their own, territories but also in the Indian Territories and those parts of Canada not immediately contiguous to settlement, all which existing law positively forbids them to do, it need not be said in Canada, but either in their own territories or in the Indian Territories.

By the Imperial Statute 43 George 3, chapter 138, the jurisdiction over the Indian Territories and all "*parts of America not within the limits of the provinces of Lower or Upper Canada, or either of them, or with-*

"in any civil government of the United States of America," is vested in the said provinces. It is a curious circumstance that the very words of this Act which seem to have been intended to deny all claim to any jurisdiction on the part of the Hudson's Bay Company, should have been taken hold of as the means of questioning its reference to them. The preamble of the Act in giving the reason for the enactment states that, offences not committed within the limits of the Canadas or the United States, as above, "are therefore not cognisable by any jurisdiction whatever." This the Company argued could not mean their territories *because* jurisdiction *did* exist there. The Act, they said could, not mean *all* British America not within the limits of the Canadas, for the assertion that no jurisdiction existed was not true of Nova Scotia or New Brunswick, and therefore might not be true of Hudson's Bay. Thus, in fact, it appears that the framers of the Act having their minds directed to the north-west, where the offences referred to had occurred, forgot to exclude the provinces lying on the opposite side of Canada, on the Atlantic coast, from its operation; and this omission, when the war was carried on between the two Companies in the interior, Lord Selkirk turned to account to throw doubt on the applicability of the Act to the Company's Territories. But the assumption that this Act does not affect their pretensions is doubly futile; for, when more closely considered, it either brings their Territories within Canadian jurisdiction or it ignores them altogether, and in either case it contracts the limits they claim. If they make good their assertion that it does not affect their territories, then it destroys their claim to have their limits extended to the boundaries of Canada. The territories referred to in the preamble of the Act are those not within the limits of *either* Lower or Upper Canada, the two provinces being treated *distinctly* as regards the territories not within their limits. Now taking Lower Canada in the first instance, it is bounded by the Ottawa, and a line due north from the head of Lake Temiscamingue, and the places outside its limits on which the Act would have effect, if ~~not~~ the Company's territories must certainly be something between those limits and their territories. But the question is more important as regards the places outside of Upper Canada. If the maps accompanying the "Statement of Rights" submitted by Sir J. H. Pelly be correct, then the territory affected by the Act is about 1500 miles distant in its nearest part from the most remote point in Canada. In other words, Canada ends at the source of Pigeon River, and the Indian Territories begin at the top of the Rocky Mountains, and we are required therefore to assume that the Imperial Legislature meant to commit the absurdity of giving jurisdiction to the courts of Canada over a territory beginning at a distance of some fifteen hundred miles from her frontier, while a different British jurisdiction (that of the Company) prevailed in the intervening space. But assuming for fact, the Company's view of the case that it did not affect their territories, we find the very purpose for which the Act was passed as expressed in the title to be to provide a jurisdiction for "certain parts of North America *adjoining to the said provinces*" of Lower and Upper Canada. Consequently, if the territory affected by the Act only commences at the summit of the Rocky Mountains, as represented by the map submitted by Sir J. H. Pelly, then as it *adjoins* this province, Canada must extend to the summit of the Rocky Mountains, so that on their own shewing the jurisdiction they exercise in the intervening space, at Red River for

instance, is out of their own territories, and therefore not only without the sanction of law but in violation of a positive enactment. They must thus either ignore their own pretensions to the territory between what they call the westerly boundary of Canada, and easterly boundary of the "Indian Territories," or they must admit that the Act under consideration (which is still unrepealed) applies to their territories, in which case their jurisdiction in every part would be in violation of the statute.

But if there was any doubt on the subject before it was fully removed by the Act 1 and 2 Geo. 4, Cap. 66, which was passed after all the strife and bloodshed in the north-west, and which after reciting the doubt raised respecting the former Act being applicable to the Hudson's Bay Company's territories, declares at section 5 in the strongest and most comprehensive manner, that the said Act and all its clauses shall be construed to apply to their territories, anything in "*any grant or Charter to the Company to the contrary notwithstanding.*"

This Act, 1 and 2 Geo. 4, Cap. 66, gives jurisdiction as full and complete as language can make it over all the Indian and Hudson's Bay Company's Territories to the Courts of Canada, and it provides for the appointment of Justices of the Peace by the Crown (both for the Indian Territories, and Hudson's Bay Company's Territories) to whom the *Canadian Courts are empowered* to issue commissions "to take evidence in any Cause or Suit and "return the same, or try such issue, and for that purpose to hold courts, &c." These courts are most distinctly made subordinate to the Courts of Canada, &c., and can in fact be created by, and exist through them only.

By the 11th and 12th clauses, however, the Crown is empowered to create Courts of Record, without the intervention of the Canadian Courts, (but without limiting the power to be exercised thro' them), for the trial of small causes and petty offences, the former being limited to civil cases not affecting a larger amount than £200, and the latter to cases in which the offence does not subject the person committing the same to capital punishment or transportation.

By this Act it is repeatedly declared and enacted in the most emphatic manner, that its enactments shall have effect "notwithstanding any-thing contained in any Charter granted to the governor and company of "adventures of England trading to Hudson's Bay."

It is true the last clause of the Act reserves to the Company in the most ample manner all rights and privileges they "are *by law entitled* to claim and exercise under their Charter." This it will be observed is what the "Statement of Rights" refers to when claiming a "*concurrent jurisdiction*" with the Canadian Courts. Now, when it is observed that the Legislature has refrained from expressing any opinion as to what the rights or privileges of the Company really are, and cautiously abstained from recognising any but what they already had "*by law,*" it is difficult to suppose that it was the intention of the Act to recognise in them those very powers which it was making the most ample provision for the exercise of by a totally different authority in strong and repeatedly expressed abnegation of their pretensions.

It is also to be observed that the previous Act, 43 Geo. 3, which denies their jurisdiction is still in force, unrestricted in every particular, and not deriving its force from the subsequent statute, which is merely *declaratory* in that particular, of its proper construction.

The question of whether the Company can exercise any legal jurisdiction within their own territories,—limited to their just extent,—loses its importance however in face of the more serious question of its actual exercise both in Canada and the Indian Territories, and that even to the extent of life and death, while the intention of the Imperial Legislature in creating a jurisdiction for those territories, reserved all important cases, either civil or criminal, for trial by the regularly constituted legal tribunals of an organized community, where the *Charter* of British rights would be held as sacred as the interests of a commercial Company who assume to be themselves the Judges where (without any reflection upon them collectively or individually) cases must, in the very nature of things arise in which they ought to be the judged.

It therefore becomes of very great moment to ascertain the truth of certain statements that have been made to the effect that their principal officers at Red River hold their commissions from the Crown, and if so, under what form, for what extent of territory, and how described. Such commissions might no doubt have been issued under the statute 1 and 2 Geo. 4 for the Hudson's Bay Company's Territories and for the Indian Territories, for the trial of small causes and offences of a minor nature as already described, without in the least infringing upon or limiting the right of Canada to intervene; but if the British Government has expressly included the Red River country in any such commissions, it can only have been through a misapprehension of boundaries, which is not to be wondered at from the policy pursued since the union of the Companies, and the erroneous view of the case they have so constantly disseminated, and no doubt any such powers, if they have been granted, would be withdrawn as soon as the case has been brought fully under the consideration of the Imperial authorities.

In concluding the question of Jurisdiction it is necessary to observe that the Imperial Statutes, herein quoted, which vest the Jurisdiction in Canada to the shores of the Pacific, have been repealed in so far as they relate to Vancouver's Island by the Act 12 and 13 Vic. Cap. 48, which re-invests the Jurisdiction of Vancouver's Island in the Imperial Government until the establishment of a local Legislature, which the Act contemplates.

At the same time, a charter was granted to the Hudson's Bay Company for the colonization of the Island, conveying a grant of the soil.

Neither the Act nor the Charter, however, confers any jurisdiction upon the Company.

The Company were required by the terms of the grant to colonize the Island within five years, failing which the grant was to become void. It was also stipulated that the grant might be recalled at the time of the expiration of their lease for the Indian Territories upon payment to the Company of the expenses they might have incurred, the value of their establishments, &c.

GENERAL REMARKS.

Before concluding this Report it is desirable to offer a few general remarks upon the subject, which the policy of the Company has kept out of view and which consequently is not generally well understood.

The Hudson's Bay Company claim under three separate titles, the first of which is the Charter of Charles the II, granted in 1670, *for ever*. The second, is the lease originally granted in 1821 to them in conjunction with the North-West Company of Canada for the Indian Territories. The third, is their title to Vancouver's Island, as explained. Under the first they base their claim to government, jurisdiction and right of soil over the whole country watered by rivers falling into Hudson's Bay,—at least, such is the theory, although they have abandoned it south of the present southerly boundary of Canada at Rainy Lake, the Lake of the Woods and along the 49th parallel, to the south of which those rivers take their rise. Under the second, they claim exclusive trade from the Rocky Mountains, west to the Pacific, and from the sources of the McKenzie River to the Frozen Ocean. There is no dispute about their title on this head, but their lease expires in two years, and it is the renewal of this lease for a further period of 21 years which they now seek to obtain.

It will be seen by the question of boundary already treated, that the country about Red River and Lake Winnipeg, etc., which they claim under their Charter, absolutely belongs to Canada; and it will be observed that the abstract right, not the value of the territory, has been dwelt upon, but unfortunately the latter has been as little generally understood as the former, the result of the means the Company have taken to conceal it, for seldom if ever has the wisdom and foresight of man devised a policy better calculated to the end for which it was intended than that adopted since the union of the Companies in 1821.

Before that union the Canadian Fur Trade gave employment to some thousands of men as mere carriers, or "*Voyageurs*" as they were termed.

In endeavouring to depreciate the national services rendered by the North-West Company during the war of 1812, at the capture of Michilimacinae, &c., Lord Selkirk alludes to this body of men as forming the "*Voyageurs Corps*," but denies credit to the Company for their important services which he admits "in a great measure secured Canada," because they were not constantly employed by the Company, and effected this service at a season of the year when the Company did not require them. Assuming this to be the fact, however, had there been then, as now, no such Company and no such trade, there would have been no such body of men ready for action in the hour of danger.

Had the circumstances of the trade continued the same to the present day, settlement must have followed the route of such a line of traffic, and the continual intercourse between this country and the fertile plains of the "far West" would have placed us as far in advance of our American neighbours in the colonization of those countries, as we are now behind them.

But the policy of the united Companies has been so admirably carried out in all its details, that an erroneous impression respecting the country and

everything connected with it had gradually got possession of the public mind, and it is wonderful with what tact such impressions may sometimes be conveyed without any statement being made contrary to truth. The very appellation of "*Hudson's Bay Territory*," as applied for instance to the Red River country, carries a false impression with it, for the waters of the Mississippi and the Red River, the Assiniboine and the Missouri, interlace with each other there, and therefore, the designation of "*Gulf of Mexico Territory*" would just be as correct. But what a different impression it would convey as regards climate? Again, almost every mention of the available parts of the Western Territories, which are well known to possess a soil and climate adapted in the highest degree for successful settlement, is interwoven with some reference to ice in some shape or other, which no doubt the Company truly encounter in carrying the trade some eight hundred miles due north through Hudson's Bay.

An admirable specimen of this kind of policy, by which erroneous impressions may be conveyed, is to be found in Sir J. H. Pelly's letter to Lord Glenelg, of 10th February, 1837 :

Parliamentary Papers,
No. 547 of 1842.

"For many years prior to the conquest of Canada, French subjects had penetrated by the St. Lawrence to the frontiers of Rupert's Land; but no competition had occurred between the traders of the two countries within the territories of the Hudson's Bay Company previous to the cession of Canada to Great Britain.

"Subsequent to that period, the greater capital and activity of British subjects led to competition, first on the frontier parts, then in the interior, and at last to the formation of a Company, combining all the individuals at that time engaged in the trade, to countries bordering on and west of Lake Superior, under the firm of the North-West Company of Montreal."

This when dissected is a significant paragraph. *Where are "the frontiers of Rupert's land,"* if the French, whose Forts were all around Lake Winnipeg, had not reached them before the cession of Canada to Great Britain? This is an important corroboration of the views of the boundary question explained in the present report.

That "no competition had occurred within the Territories of the Hudson's Bay Company" up to that time may be very true, because the Company had never come up from the shores of the Bay, and the French had not gone down—from their places on Lake Winnipeg—to the Bay. The second paragraph, above quoted, may also be substantially true, but yet it is so framed as to convey to the general reader that the competition arose from the inhabitants of Canada advancing beyond where they had been before; whereas it was the Hudson's Bay Company who then came up, for the first time, from the shores of the Bay, which led to the competition "first on the frontier parts," of Rupert's land, "then in the interior," on Lake Winnipeg, the Saskatchewan, &c., where the Canadians had long enjoyed the trade without competition.

Such is the system and policy pursued by the Company to exclude from view and create erroneous impressions respecting the Western portions of this Province, than which there is perhaps no finer country in North America. The same course marks their proceedings at the present moment, for no intimation has been given in this country of their intention to apply for a renewal of the lease of the Indian Territories; though, exercising the privileges they do in countries subject to the Canadian Government, it would not have been unreasonable to expect a different course. Neither does it appear that they have taken any means to inform the inhabi-

tants of those countries, whose rights and interests are most deeply affected by the action to be taken, that they were to make this early application for renewal of their lease. Had it been effected in the quiet manner they seem to have desired,—a consummation which the thanks of the country are due to the Imperial Government for having refused to sanction—they only would have been heard in their own case, and the result would have been, alike to the people here and in the more remote territories, a surprise.

Canada has no quarrel with the Hudson's Bay Company, and desires no harsh measures towards them. It would be alike ruinous to them and injurious to the countries over which they hold either legal or illegal sway to put a sudden stop to their operations, but it is an error to suppose that the governing of those countries is a task of uncommon difficulty. The state of anarchy which prevailed in those countries during the warfare of the Companies was the result of the strife between them, where there was no sort of authority, except what they seemed equally to wield, and not arising from any turbulent or ungovernable spirit on the part of the native population. On the contrary, the moment a recognized authority stepped into control both Companies, implicit obedience was at once yielded to it throughout those vast territories, and either party would have found itself powerless to command followers for any purpose of further aggression. This was upon the occasion of the withdrawal of all commissions of the peace, previously granted to the leading people of the two Companies, the appointment of two special Commissioners, (one of them a member of the Executive Council of Lower Canada), and the issuing of a proclamation in the name of the Prince Regent by authority of a despatch from Earl Bathurst, of 6th February, 1817, requiring the mutual restitution of all the places and property captured during the strife, to the party who had originally possessed the same, and the entire freedom of the trade to each party, until further adjudicated upon. Galling as this restitution must have been in numerous instances where party feeling, embittered by the loss of many lives, had reached the highest pitch of excitement, it was immediately complied with.

The proper course to pursue, therefore, would be to lay before the Imperial Government the expediency of annexing the Indian Territories to Canada, shewing that by this means only can those countries be retained long in the possession of Great Britain. For colonized they *must and will* be; it is only a question of who shall do it. If we do not, the Americans will, and that in spite of any thing the Company can do to prevent it. That these Territories are fit fields for settlement it is useless to dispute, for one physical fact upsets all theories to the contrary. Where a country is found to sustain *animal life* to such an extent that hundreds of thousands of wild cattle find subsistence there both in summer and winter, there man also can find a home and plenty. Nor is the country possessing this characteristic confined to a narrow strip along the frontier, but continuing to widen to the Westward it is found that the climate, even on the East side of the Rocky Mountains and at a depth of seven degrees North of the American Boundary, is milder than the average of the settled parts of Upper Canada.

On the West side of the Rocky Mountains the climate is mild at still higher latitude, but Vancouver's Island together with the contiguous

main land is perhaps one of the finest countries in the world for colonisation. The only drawback is the difficulty of access, a difficulty which the present system will never remove, for it looms larger now than it did forty or fifty years ago, when the North-West Company of Canada poured a continuous stream of traffic across the continent. This Island cannot now of course be annexed to Canada on the same terms as the other Indian Territories, as the existing Charter under which the Island is held (a different and distinct thing, be it remembered, from either the old Charter or the expiring Lease) entitles the Hudson's Bay Company to payment of the value of their establishments if the grant be rescinded, which Canada would naturally be expected to pay, if the Island were conceded to her, and it might be well to see now upon what terms this could be done, because it seems that if it be not done at the expiration of the Lease of the "Indian Territories," it could not be done afterwards, unless indeed the Company have failed to fulfill the conditions required within the first five years.

Twelve years ago, the United States had no communication with their territories on the Pacific except by sea, and during the Oregon negotiations, when proposing strenuous measures upon the subject, the President in his message to Congress 2d December, 1845, says :

"An overland mail is believed to be entirely practicable; and the importance of establishing such a mail at least once a month, is submitted to the favorable consideration of Congress.

How different the circumstances now, and how "entirely practicable" it has proved need not be dwelt upon, but it must be remarked that at no other point, North of the Gulf of Mexico, are the facilities for communication across the continent anything like equal to what they are through Canada, there being good navigation, three fourths, if not more, of the whole distance; first to the head of Lake Superior, from whence the navigation is broken to Lake Winnipeg (though about 150 miles of this distance is navigable,) then through that Lake to the Saskatchewan, on which there are obstructions, in the lower part, near the Lake, from whence the navigation is unimpeded to the very base of the Rocky Mountains.

It would be very desirable, therefore, and quite practicable, if the British Government will consent to annex the Indian Territories, extending to the Pacific and Vancouver's Island, to Canada, to establish, during summer, a monthly communication across the continent. It is of incalculable importance that these measures should be most forcibly pressed upon the Imperial Government at the present juncture, for on their solution depends the question of whether this country shall ultimately become a Petty State, or one of the Great Powers of the earth; and not only that, but whether or not there shall be a counterpoise favorable to British interests and modelled upon British institutions to counteract the preponderating influence—if not the absolute dominion—to which our great neighbour, the United States, must otherwise attain upon this continent.

No reference has been here made to the controversy between the Company and those who accuse them of exercising a pernicious influence over the Indian population, nor is it necessary to enter into the subject farther than to point out the erroneous impression the Company strive to

inculcate to the effect that they are necessary to the Indians. It may well be that the state of things is better, under them, than it was when the two powerful Companies were in hostile array against each other; and it may be that their affairs are as well conducted, with reference to their effect upon the native population, as could well be expected of a Commercial Company, having the primary question of profit and loss as the object of their association. But the question really comes to be, whether those countries shall be kept in *statu quo* till the tide of population bursts in upon them, over an imaginary line, from a country where it has been the rule that the Indian must be driven from the lands the White man covets; or be opened up under the influence of the Canadian Government, which has always evinced the greatest sympathy towards the Indian race, and has protected them in the enjoyment of their rights and properties, not only in their remote hunting-grounds, but in the midst of thickly peopled districts of the country.

CONCLUSION.

It is, therefore, respectfully recommended, that His Excellency the Governor General in Council will be pleased to adopt the foregoing views as the bases of the instructions to be given to the Provincial Commissioner under the following heads:

First.—To urge Her Majesty's Government to define the Northerly boundary of Canada.

Second.—To expose on behalf of Canada, before the Committee of the House of Commons and Her Majesty's Government, so far as may be necessary, the fallacy of the position assumed by the Hudson's Bay Company in their "Statement of Rights and Map."

Third.—That, instead of renewing the lease of the Indian Territories to the Hudson's Bay Company, Her Majesty's Government may be pleased to recognize those Territories as appertaining to Canada by right of prior discovery, or otherwise to annex them to her, leaving it to the Provincial Government to renew the lease, for such period as may be deemed expedient, in whole or in part, according as certain portions may now or hereafter become necessary for settlement or the opening of communication across the Continent.

Fourth.—That, in the event of Her Majesty's Government being indisposed to accede to such a proposal, the Commissioner be instructed to press for a definition of the Eastern boundary of the said Indian Territories, identical of course with the Westerly boundary of Canada, whether it be, as represented by the Hudson's Bay Company, at the summit of the Rocky Mountains, or somewhere between there and the original possessions of the French below the forks of the Saskatchewan.

Fifth.—That, in case of Her Majesty's Government being inclined to countenance the pretensions of the Hudson's Bay Company, there being yet two years of their Lease unexpired, which period affords ample time for enquiry, and the interests of the people of those countries being as yet unrepresented and their wishes unknown, the Commissioner be instructed to press for delay with a view to a Commission being appointed by the Provincial Government to enquire into and report upon the State of those Countries,

and the effect of the operations of the Company in every respect bearing upon the well-being of their inhabitants.

Sixth.—That, the Commissioner be directed to ascertain upon what terms Vancouver's Island can be obtained, in the event, of course, of the other Territories West of the Rocky Mountains being made part of Canada.

Seventh.—That the Commissioner be instructed to ascertain whether Commissions of the Peace emanating direct from the Imperial Government, are held by the officers of the Hudson's Bay Company who assume authority in the countries about the Red River, and, if so, whether they merely refer to "Rupert's Land," or expressly include those countries; and, in the latter case, to pray that such Commissions be hereafter granted only through the Governor General of Canada.

Respectfully submitted,

JOSEPH CAUCHON,

Commissioner of Crown Lands.

CROWN LAND DEPARTMENT,

Toronto, 20th February, 1857.

REPORT

ON

Hudson's Bay and Indian Territories and
Boundaries of Canada, &c.

Referred to a Committee of the Honorable Executive Council.

By Command,

JOSEPH CAUCHON,
(Commissioner.)

C. L. Dept., 20th February, 1857.

